The Movement to Restrict Children's Access to Tobacco in Minnesota

Jean L. Forster, Ph.D., M.P.H.
Assistant Professor, Division of Epidemiology
School of Public Health, University of Minnesota
Minneapolis, Minnesota 55455

Mary Hourigan
Division of Epidemiology
School of Public Health, University of Minnesota
Minneapolis, Minnesota 55455

Jeanne Weigum, M.S.W.
President, Association of NonSmokers-Minnesota
1421 Park Avenue
Minneapolis, Minnesota 55404

Presented at
Surgeon General's Interagency Committee on Smoking and Health
May 31, 1990

2026172402

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

It is becoming clear that in order to prevent tobacco use, we must include strategies which address the supply side, thus making it more difficult for young people to obtain tobacco. By their own report it appears that teenagers primarily obtain cigarettes from commercial sources rather than friends or family, and so laws which effectively prevent purchase by minors could have a major impact on prevalence of tobacco use in this age group.[1,2] While over forty states have laws which prohibit tobacco sales to young people, these laws are largely unenforced, and so their potential impact is unrealized and unknown.[1,3,4,5]

We have begun a research program at the University of Minnesota to develop community-level policy interventions to reduce children's ability to obtain tobacco, and to evaluate the impact of current policies and policy changes in the area of teenage access to tobacco. The purpose of this paper is to summarize the research findings on availability to tobacco to children, and to describe the local and state activities to prevent the sale of tobacco to minors.

Availability of Cigarettes to Teenagers - Research Results

Because of the need to evaluate the potential of policy changes to reduce children's access to tobacco, and ultimately to reduce the prevalence of youthful tobacco use, we began a community level feasibility study. The purposes of the study were 1) to determine what policy changes communities are willing to implement to reduce children's access to tobacco, and 2) to obtain preliminary information about the impact of policy changes on children's ability to purchase tobacco.

The communities of Hastings (pop. 15,000), Stillwater (pop. 13,000) and White Bear Lake (pop. 25,000) were selected from the Minneapolis - St.Paul metropolitan area for this study. The methods are described in detail elsewhere[6]. Briefly, a list of all licensed tobacco outlets was obtained from the city clerk in each community. Seven boys and seven girls age 12 - 15 were recruited to be confederates in this study. During April and May, 1989, three or four different teenage confederates attempted to buy cigarettes, on different occasions, in each tobacco outlet in each community.

2026172403

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

A total of 475 purchase attempts were made at 80 over the counter tobacco outlets and 49 vending machines in the three communities. Attempts were made to purchase cigarettes from every licensed outlet. In these communities the most common type of business selling tobacco over the counter is convenience stores, representing 39% of the over the counter outlets. Vending machines are most often found in restaurants (31%) followed by bars (27%).

The teenage confederates in this study were successful in purchasing cigarettes in 63% of their attempts, as shown in Table 1. This includes 53% of the over the counter attempts and 79% of the attempts at vending machines. Among over the counter attempts, the teenagers were most successful purchasing from gas stations (69%), followed by grocery stores (62%) and convenience stores (56%). From vending machines, these teenagers were most successful when the machines were located in gas stations (100%) and restaurants (89%). Only four over the counter locations and two vending machine locations (5% of the total cigarette outlets in these communities) never sold cigarettes to any of our teenage confederates. This means that 100% of the outlets in Stillwater, and almost 95% of the outlets in Hastings and White Bear Lake sold cigarettes at least once in three or visits by a confederate age 15 or younger.

Our teenage confederates had high success rates in establishments often characterized as adult locations. In this study, bars, liquor stores and private clubs represented 45% of the vending machine locations and 19% of the over the counter locations. The combined purchase success rate for these "adult" vending machine locations was 78%, and for over the counter locations was 47%. Clearly, it is important to control children's access in these locations, and not to assume (or accept the tobacco industry's logic) that these locations have controlled access.

Similarly, restaurants represent 31% of the vending machine locations, and are among the most accessible locations for our teenage confederates. Many of them also have liquor licenses which would place them under exemptions to vending machine control policies as proposed by the tobacco industry.

2026172404

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

We initially hypothesized that older teenagers would be more successful at purchasing cigarettes compared to younger teenagers, and that boys would find it easier to purchase than girls. Age was positively associated with success rate for both boys and girls in over the counter sales and for girls in vending machine sales, as shown in Table 2, with the largest difference between the ages of 14 and 15. However there was no difference by age for boys in success rate from vending machines. We were surprised to see that boys were markedly less able to purchase cigarettes compared to girls, especially over the counter. Even the youngest age girls were more successful than the oldest age boys in this study. It appears that sales people are more suspicious of boys, and perhaps more willing to attribute negative motives to young teenage boys than to same age girls.

Prior to the start of the study, the city of White Bear Lake had initiated efforts to inform merchants about the state law regarding cigarette sales to minors, and had warned them of the city's intention to enforce the law. For this reason it was of interest to examine purchase success by city. Our results show that White Bear Lake merchants were no less likely to sell cigarettes to minors than other communities, despite these notifications (59% overall adjusted success compared to 62% for Hastings and 66% for Stillwater).

After the purchase attempts were completed in all communities, the Minnesota legislature passed a law raising the charge for sale to minors from a petty misdemeanor to a gross misdemeanor, which carries a maximum penalty of $3,000 fine and/or one year in jail. This change received a great deal of publicity, and merchant associations attempted to inform their members about this change and their increased liability. The new law went into effect July 1, 1989. In an attempt to measure the short term impact of the change in penalty, a 15 year old girl who had made purchase attempts during April and May at almost all outlets in the three cities, and two 14 year old boys who, between them, had visited all outlets were taken back to the same outlets in the three cities. The second visit occurred during the end of July and beginning of August, 1989. A comparison of purchase success before and after the new penalty went into effect is shown on Table 3. Efforts to purchase cigarettes over the counter after the new penalty were significantly less successful for both male and female confederates. However there was no measurable decline in purchase success

2026172405

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

from vending machines over the two time points.

The vast difference in success rates between vending machine locations and over the counter locations, and the lack of responsiveness of vending machine locations to an increase in penalty for sale to minors points to the necessity for controlling this source of cigarettes. The impact of the penalty increase on over the counter sales and previous studies[3] show that sales people do learn, at least over the short term, to distinguish customers by age and not to sell cigarettes to minors. However it seems apparent that employees do not feel similarly responsible for monitoring sales by vending machines, even when the penalty is high. Our study points out that young boys in particular have a difficult time buying cigarettes over the counter - they were successful less than 10% of the time after the increase in penalty. This makes vending machines virtually the only commercially available source of cigarettes for that group, who are at the age when more individuals start smoking than any other.

We found that after the increase in penalty for sale to minors, some merchants made efforts to reduce the likelihood of sale to children. For example, some vending machines were moved further inside the establishment, more signs announcing the law against cigarette sales to minors were posted, and merchants were more likely to ask if the teenager was 18. These efforts were largely ineffective, as others have reported[5]. Education of merchants must emphasize that none of these measures is sufficient to prevent sales to children, and that requiring proof of age is the only effective measure.

In summary, the data presented in this study argue for the importance and the potential efficacy of more stringent and universal controls over the distribution of cigarettes, in order to limit children's access to them. Our study emphasizes the importance of addressing cigarette vending machine sales as an issue separate from over the counter sales, because it appears that vending machines sales cannot be controlled by policies which address over the counter sales. It also argues for a ban on vending machines rather than partial restrictions which exempt some locations because teenagers in our study were able to purchase cigarettes from all categories of locations. Finally, the

2026172406

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

short term effectiveness of increasing the penalty for sale of cigarettes to minors has been demonstrated for over the counter sales.

Minnesota Laws Relating to Children's Access and Use of Tobacco, Pre-1990

Minnesota is one of the states with several laws concerning sale, distribution, and use of tobacco which could have an impact on tobacco use by young people. Sale or distribution of tobacco to those under 18 has been prohibited for at least 40 years. In 1989, the Minnesota Legislature increased the penalty for sale to minors to a gross misdemeanor, which carries a maximum penalty of a $3,000 fine and/or a year in jail. Local jurisdictions are authorized (but not required) by state law to license tobacco outlets. Virtually all exercise that option, with annual fees ranging from $12 to $50. At least 36 communities include in their licensing ordinance a provision for suspending or revoking tobacco licenses if the licensee sells tobacco to minors. All free distribution of tobacco products has been prohibited by the cities of Minneapolis and St. Paul since 1979, and by the state of Minnesota since 1987. The Minnesota cigarette excise tax is one of the nation's highest at 38¢ per pack, with the last increase (15¢) occurring in 1987. Use of all tobacco products by minors has been prohibited by state law for many years. Recently that law has been taken more seriously by Minnesota school districts - since 1986, approximately 90% of the districts have adopted tobacco free policies which apply to students, staff, and visitors alike. With the exception of the tobacco-free school policies, very few of the laws to limit minors' access or use are routinely enforced.

Recent Action to Limit Children's Ability to Purchase Cigarettes

1. White Bear Lake

Following the collection of the baseline data reported above, the intervention phase of the feasibility study was begin in White Bear Lake and Hastings, with Stillwater designated as the no-treatment comparison. A community organization process was begun to identify residents with a particular interest in children and/or tobacco use, and to involve them in a community task force. Project staff began by contacting people known to us in the communities, and then we followed up on successive referrals over a period of about two months. In both communities we arranged to present an overview of the problem of teenage access to tobacco and a summary of the community-

2026172407

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

specific baseline data at a weekly Rotary Club meeting. These presentations served as an introduction to some key leaders in the community, generated referral to other important leaders, introduced us to the local press, and at least in White Bear Lake, gave an important civic group a sense of ownership in the project.

In White Bear Lake the first meeting of the community task force was held in July, 1989. The White Bear Lake task force included representatives of key sectors in the community. The police chief, who had been involved in several youth-related tobacco control activities, was our first member of the task force. A city council member became involved early in the process, and introduced us to the president of the school board, who joined us also. The Rotary Club produced several owners of local businesses, including those which sold tobacco, who provided legitimacy within various sectors of the business community. The local chamber of commerce became part of the task force, and were very supportive of the effort to reduce youth access via merchant education. Several parents of teenagers became active also, as did several members of the local American Association of University Women. The assistant volunteer fire chief provided a location for the meetings.

During the initial meetings, members were given more details about the availability of cigarettes to teenagers in their communities. (Purchase success was reported by category of business rather than for individual businesses, in part to meet the terms of the University of Minnesota Human Subjects Committee.) Starting with a list of possible legal and voluntary remedies drawn up by the study, shown in Table 4, the task force brainstormed possible ways to address the problem of youth access to tobacco. They felt strongly that their first action should be working with merchants to elicit voluntary compliance with the law. However it became obvious that vending machines were an obstacle to encouraging over the counter restrictions on sale, and vending machines became the focus of action. The city staff were contacted to draft an ordinance totally banning cigarette vending machines, and the city council member on the teenage tobacco access task force introduced the ordinance in September, 1989. The task force members each committed themselves to contacting their city council members in support of the ordinance, and to recruiting friends and neighbors to do the same. The city council was given a copy of the summary data describing

2026172408

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

availability of cigarettes to teenagers in White Bear Lake. The public hearing was scheduled for the October 10, 1989 council meeting, with the final vote to be taken also that evening. Task force members spoke at the hearing, including the president of the school board who presented a resolution from the school board in support of the ordinance, and the representative of the volunteer fire department, also indicating his organization's support. Representatives from the student council of the high school, of local voluntary health agencies, and concerned citizens also voiced their enthusiasm for the ordinance. The only person to speak against the ordinance in the hearing at White Bear Lake was the legal counsel for the Minnesota Automatic Merchandising Council, whose members include vending machine manufacturers, suppliers and operators. The city council passed the ordinance by a 4-1 vote, after an articulate summation of the issue by the mayor, who indicated his strong support, even though a smoker, for the ordinance.

Thus, as of January 1, 1990 all cigarette vending machines were removed from White Bear Lake, making it the first community in the nation to totally ban that means of distribution of tobacco. Their action drew statewide and national attention, with major wire services reporting their story. Community leaders were aware before the ordinance passed that theirs might be the only city nationally to take that action, and they were happy to be recognized for their leadership role. In particular the mayor and the city council member who introduced the ordinance became articulate and knowledgeable spokespersons for the movement to ban cigarette vending machines. They were the focus of radio and television talk shows nationally and statewide and feature articles in national publications.

2. Other Minnesota Communities

Virtually as soon as White Bear Lake took action, other communities began to consider similar ordinances. On October 27, city councilmembers in both Minneapolis and St. Paul announced their intention to introduce vending machine restrictions. By the end of November, 1989, two more communities had passed total vending machine bans, and two communities had adopted serious restrictions on where vending machines could be located. It was clear that this was an idea that generated considerable interest and support among local government officials and community members, evidencing an apparent readiness to endorse stronger tobacco control measures.

2026172409

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

The movement to consider restrictive ordinances appears to have come from various sectors in various cities. In two of the largest, Bloomington and St. Cloud, the community advisory board of the local health department worked with city council members to introduce the ordinance. In other communities city council members brought the issue up initially, and in others (Duluth and Rochester, for example) the Parent-Teacher Association requested that the ordinance be drafted. In some cities concerned citizens acted as individuals to ask their city council to consider an ordinance. Regardless of who took the initiative, identifying a key advocate on the city council appeared to be essential. Someone on the city council had to take the lead in developing the support for the issue among other councilmembers.

The desire to take action was not uniform and some cities, most notably Hastings, our second intervention site, have been unresponsive. One factor, unknown to us at the start of the study, is that the long-time mayor of the city is part of a family which owns all the cigarette vending machines in the city. Her style of leadership has effectively stifled any action on teenage access to date. In another metro area community, a city council member's family owns a local vending machine company, at least partially accounting for the lack of action by that community. It appears that connections to the tobacco distribution industry by local government officials might be a factor in lack of action by some communities.

In order to get more systematic information about the response of local governments to the interest generated by the White Bear Lake ban, a telephone survey was conducted from March 5 - April 5, 1990. Included in the sample were all Minnesota cities of population $\geq$2,000, or 210 cities representing about 25% of the cities in the state. The interviews were conducted by professional telephone interviewers from the University of Minnesota with one individual in each city government. That person was most often the city administrator or city manager (70%), but was sometimes the mayor (23%) or the city clerk (19%). Questions were asked about a variety of ordinances which are available to cities which might limit children's access to tobacco. Respondents were asked whether each ordinance had ever been considered in that community, and details were collected about the action on the ordinance. Questions were also included concerning

2026172410

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

efforts to enforce the current laws regarding minors and tobacco, and any other efforts of that community to restrict young people's ability to obtain tobacco. In addition a copy of any relevant ordinance was obtained from the city. Information from two communities which have taken action since the end of the survey are included, for a total of N of 212.

We found that 37 Minnesota communities, or 17.4% of those of population ≥2,000, have passed ordinances restricting cigarette vending machine sales, with 36 of them adopting ordinances from October, 1989 to May, 1990. As shown in Table 5, about half of the ordinances passed are total bans, and those 18 communities include five of the top ten cities in the state by population. About a third (12) of the ordinances are partial restrictions which either exempt some locations, specify where vending machines are not permitted, and/or require locking devices on some or all of the remaining machines. Communities in this category include Minneapolis, St. Paul and Duluth, the top three communities by population in the state. The remaining seven ordinances specify that the machines must be under supervision or within view of employees. Most of the cities adopting ordinances are within a 60 mile radius of the Minneapolis-St. Paul metropolitan area. Communities close to the metro area reported the highest rate of ordinances, and those more than 120 miles away from the metro area were the least likely to adopt any ordinance. Table 6 shows that most of the ordinances have been passed in cities of population ≥10,000. The rate of adoption of total and partial restrictions is positively associated with city size, but smaller communities are more likely to require supervision of machines as a way of controlling minor's access.

We found that a surprising number of city councils have considered total bans on cigarette vending machines (29%, or 60 of the cities surveyed) (see Table 7). These proposals were formally defeated or informally rejected by only 17 city councils, leaving at least 25 governments still interested in taking action beyond the 18 which already have adopted total bans. Similarly about 35 cities remain interested in some level of partial restriction.

We were also surprised to discover that 36 communities (17% of those surveyed) already have provisions in their licensing ordinances to suspend or revoke tobacco licenses if the vendor is caught selling tobacco to minors (Table 8). Almost half of these ordinances are in the smallest

2026172411

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

cities in the survey, and all but one of these ordinances was passed during the late 1930's - early 1940's. There are no indications that these penalties are being applied.

Other ordinances which have been passed by at least one Minnesota city to limit minors' ability to purchase cigarettes include: requiring that licensees post a bond which would be forfeited if found selling tobacco to minors (one city); requiring that cigarettes be sold from behind the counter (two cities); and fining minors who are found purchasing tobacco (five cities).

About 58 of the cities surveyed (38%) report current efforts to enforce the state law prohibiting tobacco sales to minors (Table 9). Eleven cities, mostly in the smallest size category, report active enforcement of the state law. The most often reported effort is education of merchants or formal notification of merchants regarding the state law (38 cities, 18%). Other efforts include posting signs, and requesting voluntary action by merchants such as voluntary removal of unsupervised machines.

The most recent example of active enforcement is in the city of Minneapolis, where the city licensing department cited eight establishments for selling tobacco to a teenage confederate. The city council has decided to adopt a three-tier penalty system, with the first offense resulted in a three-day license suspension, the second offense bringing a 30-day suspension, and a third offense resulting in loss of tobacco license.

The White Bear Lake task force has developed and implemented an aggressive model of merchant education which appears to have produced significant results (see below). With University of Minnesota staff assistance, they designed window decals, large buttons for salespeople to wear, laminated signs stating the state law, and a brochure outlining the procedures and rationale for asking for age identification. The task force raised the money to pay for the materials, and hand delivered them with an explanation to each over the counter tobacco license holder in the city. Task force members also made follow-up calls on merchants to reinforce the message.

2026172412

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

3.Role of Tobacco Control Activists

Communities interested in taking action on this issue were assisted by several groups. The university research group testified at numerous city council hearings, and offered advice to many communities over the phone. We also put together fact sheets and a written summary of research results that were mailed in response to requests for more information. The city of White Bear Lake estimated that about 250 calls were received from around the state and the nation for copies of their ordinances.

The existing and experienced network of tobacco control activists was crucial to the spread of the ordinances in Minnesota. Local tobacco control advocacy groups, led by the Association for Nonsmokers-Minnesota (ANSR), testified at hearings, helped communities organize their strategy and their testimony, helped communities collect local data on purchase success, and organized media events. ANSR, in conjunction with the University of Minnesota research group, organized a series of six workshops held from December to May, 1989-90 to train local government officials and community activists about how to get address teenage access to tobacco in their communities. The information packets developed for these workshops were sent on request to many cities which did not attend the workshops. The Coalition for a Smoke-Free 2000 called on member organizations such as the American Cancer Society and the American Lung Associations to mail action alerts to their volunteers to encourage them to initiate or support vending machine bans in their communities.

4. The Industry Response

While White Bear Lake's action caught both the vending machine industry and the tobacco industry off-guard, by the end of October they had organized a response. The Minnesota Automatic Merchandising Council's (MAMC's) initial response to the White Bear Lake ordinance was to propose a partial ban which would "require the removal of vending machines from public places where minors have access to the machines while allowing [them] to remain in bars, taverns, cocktail lounges where minors do not have access to such machines" (letter from Thomas Briant, attorney for MAMC, to Joan Niemec, Minneapolis City Councilmember, 10/23/89).

2026172413

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

As it became apparent that more, and especially larger, cities were going to consider total bans, MAMC joined with four other Minnesota trade association involved in the tobacco, liquor or entertainment industry to form an organization called the Coalition for Responsible Vending Sales (CRVS). Early news stories reported that the Tobacco Institute was a partner in the CRVS, and included quotes from Gary Miller, spokesperson for the Tobacco Institute[7]. However local spokespersons for CRVS in later months denied that the tobacco industry was involved in the coalition.

The CRVS strategy was basically fourfold. First, in mailings to cities and at local ordinance hearings, they used results from a 1989 study commissioned by the National Automatic Merchandising Council (see Appendix A for executive summary) to discredit research done by our group at the University of Minnesota, and to discount our results showing that over half of tenth graders in our study list vending machines as a major source of cigarettes[2]. Second, they suggested to city councils that they delay action or defeat the proposed ordinance, because CRVS intended to sponsor statewide legislation in the upcoming legislative session which would provide uniform standards for the whole state, and end the "hodgepodge of local laws". This strategy was immediately recognized as a classic preemption strategy which has worked so well at the state level for the tobacco industry[8]. Third, if the city council still wanted to take action, they were encouraged to adopt a compromise ordinance significantly weaker than the compromise originally proposed by the MAMC, as described above. The new compromise started out as simply requiring vending machines to be placed under supervision, and was reborn when the first was rejected as a combination of supervision, locking devices, and exemptions for businesses with liquor licenses. Fourth, they suggested to city councils that they had discovered an unfair loophole in the state law, namely that minors were not prohibited from purchasing tobacco while those who sold tobacco to minors are liable, and that city councils should take action to make minors liable. This proposal had instinctive appeal to many local government officials, allowing them to overlook obvious problems in enforcement, and the fact that the whole movement to limit youth access had begun in this state as a result of demonstrating how easily minors could purchase cigarettes. That data would be much more difficult to collect if minors were prohibited from buying tobacco.

2026172414

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

Locking devices became a key industry alternative to proposals to ban cigarette vending machines. A local vending machine manufacturer developed a prototype which claimed to be foolproof. The prototype consisted of a vending machine wired to a remote button and bell mechanism. When quarters were inserted, the bell sounded, the button was lighted, and the levers could not be pulled until the machine was activated by someone pressing the button, thus allowing the transaction to be completed. The prototype required the button to be pressed each time a purchase was attempted, and if the button was depressed (ie. taped open) or the device unplugged before the quarters were inserted, no purchase could be made. The company is marketing the device, which is only usable on electronic machines, for about $150, and indicating that it can be installed by the vending machine owner.

Tobacco control advocates have generally opposed the locking device alternative because it is untested except in Utah, where the state law requiring such devices was found to be ineffective and was repealed, and in small communities, such as Woodridge, Illinois, with very small numbers of machines. Another theoretical argument against the devices is that they require no face-to-face interaction with an employee, and in fact the employee doesn't even have to see who is purchasing before pressing the button. It has been suggested that most busy employees would soon begin to respond automatically rather than interrupting their other duties to check age identification. Also, the demonstrated prototype clearly would not be the only locking device on the market, and there were no assurances that others would be as difficult to disable.

The CRVS organized local vending machine operators and distributors to appear at city council meetings and testify that a total ban would cause financial hardship for them, and/or that their establishments do not sell tobacco to minors. Having children who purchased cigarettes in that community testify about their successes was an important tactic, and usually discounted any claims by businesses that they had voluntarily solved the problem. Interestingly, people who smoke never appeared at local hearings to testify against the ordinances, but some who happened to be in the audience for other reasons testified on behalf of vending machine bans. City councils frequently noted that the only opposition was from individuals whose motivation for speaking

2026172415

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

against the ordinance was economic.

The CRVS also tried to convince city councils that the true motivation of the health advocates was to prohibit smoking entirely, that teenagers who want cigarettes will get them anyway, and that they were sincere in their desire not to see children get cigarettes or smoke. We countered with the arguments that this was entirely a children's issue, because those adults who smoke have many other, cheaper sources, and that our efforts were aimed at preventing young children from starting to smoke.

5. Action at the State Level - The Attempt to Preempt

As the CRVS had suggested, they found House and Senate authors for an industry-sponsored bill addressing cigarette vending machines. Their version exempted machines from any regulation which were located in a factory, business, office, or other place not open to the general public; required machines in off- and on-sale liquor establishments to be placed within view of an employee; required all other machines to controlled by locking devices. The final clause preempted local ordinances more restrictive than the state law would be if this version passed. At the point that the legislation was introduced, about 20 cities were known to have passed ordinances more restrictive than the language in the industry-sponsored bill.

The chief author for the House bill was the powerful chair of the Education Committee, whose district included a vending machine business run by a politically powerful individual. In the Senate, the chair of the Commerce Committee, where the bill would be heard, was scheduled to introduce the bill until a major city in his district, Duluth, passed a very restrictive ordinance. The bill was introduced instead by the committee vice chair. Despite the fact that the 1990 legislative session would be short and was primarily to resolve budget issues, sponsors of both bills were promised hearings in the respective Commerce Committees.

The health advocates took the threat of preemption very seriously. All of the state health groups which work on or have an interest in tobacco policy issues, including voluntary agencies, professional organizations, the Minnesota Departments of Health and Education, the University of

2026172416

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

Minnesota School of Public Health, major insurance companies and health maintenance organizations, have representatives on the Minnesota Coalition for a Smoke-Free 2000. The Legislative Affairs Committee of that organization became the major strategizing group for the effort to kill the industry bill. We decided that the industry bill would be the only issue the Coalition would work on during the 1990 session. Further, we decided that the primary focus of the attack would be on the issue of preemption. It was not thought fruitful to argue the merits of the bill otherwise, or to debate the issue of vending machine restrictions or tobacco access more generally. We focused on the abridgement of local control which the preemption represented, and that this bill was a tobacco industry bill. When the issue of compromise came up, we decided together that there would be no compromise on the issue of preemption. Anything short of killing that clause was unacceptable. Because of the five-year history of the Coalition, and the successes the member organizations had experienced at the state legislature by working together, the health lobby was able to stay completely united in the primacy of that goal.

Because the issue was framed as one of local control, we were able to generate support from outside the Coalition. The League of Minnesota Cities is well respected by legislators, and worked with us against the preemption clause. The local control issue was attractive to Republican members of the legislature also, and so we were able to draw on some unexpected support.

The industry was represented by individuals with a great deal of power and influence at the legislature. A key public relations figure well known to the legislators was a constant presence. Health advocates recognized from other battles local and national lobbyists and other representatives of the tobacco and alcohol industry. Locally the industry used a law firm as lobbyists whose members have been Democratic legislators or key aids to past state Democratic administrations.

One industry strategy was to frame the issue as one of jobs. They claimed 275 jobs would be lost statewide if local restrictions were allowed to continue. At the legislative hearings they brought in uniformed vending machine route drivers who spoke of their financial obligations and families which would be affected if their jobs were lost. However they were only able to find one person

2026172417

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

who could testify that he had already lost his job as a result of the many ordinances which had been passed at that point. We argued that selling the same number of cigarettes in person compared to by machine was likely to create jobs, not destroy them.

An argument attractive to legislators from rural areas was that the smaller towns in their districts were unlikely to pass ordinances, and that the state bill was better than nothing. The industry also argued for statewide uniformity, that it would be too hard to do business with many different ordinances in adjacent communities. The League of Minnesota Cities pointed out that we don't have statewide uniformity in many areas, including liquor control, and that there were no compelling arguments in favor of uniformity in the case of tobacco.

The tobacco control advocates drew on their years of experience with other legislative issues to educate Commerce Committee members and allies in the legislature about the dangers of preemption. Many person-hours were spent at the Capitol in conversation with individual legislators. Considerable time was also spent in organizing telephone and letter-writing campaigns to legislators, especially from individuals in Commerce Committee members' districts.

Probably the group most influential against preemption were the city councilmembers, mayors, and community activists from the cities where restrictive ordinances or total bans had already been passed or were under consideration. Led by the mayor of White Bear Lake, these individuals participated in a press conference at the legislature the week of the House Commerce Committee hearings and lobbied their legislators, many of whom they knew personally. They very articulately relayed the level of thought and study that had gone into adopting these local ordinances, their sincere concern for children which had motivated their actions, and their outrage that the legislature might presume to know better than they what was good for their communities. They were a group of individuals totally activated on this issue, and they were the chief spokespeople against preemption at the hearings. Signs were made from each community which had passed an ordinance and representatives from those communities were very visible in the audience during the hearings.

2026172418

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

The other key strategic group were children who had participated in purchase attempt studies. They testified about the ease with which they had purchased cigarettes, and how strongly they felt that something should be done to protect their peers. While they testified in the Senate Commerce Committee, hundreds of packs of cigarettes purchased by children in our studies were unloaded on the table. The symbolic value of their testimony can't be overestimated.

The House Commerce Committee hearings were held first, and the bill was passed out of the committee, after defeat of a bipartisan-sponsored amendment to delete the preemption clause. The loss was no surprise, because the House Commerce Committee was known to be unfriendly. However the loss required us to redouble our efforts, especially in contacting constituents of key Senate committee members. The issue of compromise arose again after the House committee loss, primarily the possibility of grandfathering in the communities which had already passed ordinances, so they would be excluded from the preemption, or attaching a sunset clause to the preemption, so that in two years communities could pass once again more restrictive ordinances. Both of these compromises were rejected by the tobacco control group, who recognized the first as a bald attempt to defuse the opposition from communities with ordinances. The community leaders also rejected that compromise without hesitation.

The Senate Commerce Committee included several powerful members who have been legislative leaders in tobacco control issues in the past. At the hearing they felt confident enough to reject the idea of amending the bill, and to try to kill it altogether by tabling it. The vote to table passed, and preemption was dealt a fatal blow. However, to our surprise, the bill itself resurfaced without the preemption clause, was passed in both the House and Senate, and signed into law by the governor on April 9, 1990.

Our preference would have been to not have had any legislation short of a total ban come out of the legislature. However since we had not fought the provisions of the bill other than preemption earlier, we were unable to do so after preemption had been removed. Our fear, and the tobacco industry's hope, is that the weak state law will serve as a de facto ceiling rather than a floor for communities which have not acted yet.

2026172419

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

6. The Role of the Media

From the beginning of this project we have made deliberate attempts to involve the media, particularly newspapers, in the issue. University research staff called the attention of the local press to the groundbreaking nature of White Bear Lake's action, and we called reporters every time a new ordinance was passed. The press responded with a great deal of interest to the issue, and their sympathies with our side of the story grew as the issue developed a David vs. Goliath flavor. Newspaper columnists were especially effective in making public the tactics of the industry, and calling public officials to task who seemed to be bowing to industry pressure. Altogether the two major metropolitan daily newspapers published over sixty articles, editorials, columns, and editorial cartoons on the issue of teenage access to tobacco during the past seven months. A number of letters to the editor and opinion pieces were also published (see Appendix B for examples). During the preemption battle at the legislature, several of those pieces were at our specific suggestion. The effectiveness of the tobacco control advocates with the press was in part due once again to experience with previous issues, and to deliberate cultivation of specific reporters by giving them exclusive information. ANSR in particular also had much experience with press conferences, and they were used to good advantage.

The broadcast media also reported new ordinances as they were passed, and on at least two occasions the local television news programs included features on the issue of teenage access to tobacco. The issue was pursued in depth by the regional cable television stations, with each of them devoting a talk show program to the issue.

7. Implementation

Many of the ordinances have just gone into effect, or won't be effective until a later date, so we have little information on implementation. Total bans on cigarette vending machines obviously are the easiest ordinances to enforce, and indications are that businesses are complying with the law. The variety of new ordinances gives us an extraordinary opportunity to compare effectiveness of the variations on total bans, partial restrictions, and locking devices in limiting access. The University of Minnesota research group will be collecting data on the response of tobacco vendors

2026172420

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

to local policy changes; the effectiveness of locking devices in various types of outlets, especially in St. Paul where all locations are required to install them and no locations are prohibited; comparing compliance with the state law and ordinances in local communities; and measuring the impact of these cigarette-focused policies on availability of smokeless-tobacco.

Preliminary follow-up data on purchase success is shown on Table 10 for two of the three communities in the baseline sample (Hastings, with no ordinance, and White Bear Lake, with total vending machine ban plus aggressive merchant education) plus two additional communities, one with a total cigarette vending machine ban (Brooklyn Center) and one requiring vending machines to be placed under supervision (New Brighton). The new ordinances in Brooklyn Center and New Brighton have been in effect since April 1, 1990, and in White Bear Lake since January 1, 1990. These early follow-up data show that White Bear Lake has been the most successful in reducing ability of teenagers to buy cigarettes, with a decline over a one-year period from 83% to 26%. Hastings has shown no decline, and the weak ordinance in New Brighton has not been effective in limiting access. Brooklyn Center has shows an overall lower rate of access due to the elimination of vending machines. However some spillover effect influencing over the counter sales, since the rate of success over the counter is lower than for other communities except White Bear Lake.

8. What Next?

The most urgent challenge for the local tobacco control advocates is to encourage communities to adopt restrictive ordinances or total vending machine bans before the August 1, 1990 effective date for the weak state law. We believe that it will be difficult to encourage communities to eliminate some or all vending machines after owners have made a financial investment in locking devices. The Coalition for a Smoke-Free 2000 and ANSR are sending information, encouragement, and offers of assistance to all communities which have not yet taken action.

A second priority is to address over the counter availability of tobacco. This issue is addressed in three ways: 1) communities are encouraged to adopt a merchant education strategy similar to that described for White Bear Lake above; 2) communities can adopt new ordinances such as requiring tobacco to be sold behind the counter only, or requiring bonds of all licensees, or providing

2026172421

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

administrative revocation of license to sell as penalty for selling to minors; 3) cities can be encouraged to actively enforce the age of sale law by carrying out sting operations and citing merchants found to be selling tobacco to minors.

9. Conclusion

The recent flurry of activity in Minnesota demonstrates that a high level of enthusiasm can be generated for fairly dramatic policy changes in the area of childen's access to tobacco. It appears to be most productive to work for these changes at the local level, and communities appear ready to take a leadership role in this area. Success is possible with relatively small investment of resources; in fact motivated individual citizens can often make the difference. Our experience suggests that a synergistic interaction exists between researchers and activists, and that both working together can have a profound effect on community tobacco policy.

Key factors in successful policy change to limit sales of tobacco to children include: 1) demonstrating children's ability to purchase tobacco locally, with the children who participated in the purchase attempts willing to testify at hearings; 2) maintaining the focus of the policy changes on children, and resisting attempts to label the effort an anti-smoking campaign; 3) involving the media in the issue; 4) developing the support of one or more key advocates among the city council.

2026172422

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

REFERENCES

1. Reducing the health consequences of smoking: 25 years of progress. A Report of the Surgeon General. U.S. Department of Health and Human Services, 1989.

2. Forster JF, Klepp KI, Jeffery RW: Sources of cigarettes for tenth graders in two Minnesota cities. *Health Educ Res* 1989;4(1):45-50.

3. Altman DG, Foster V, Rasenick-Douss L, Tye JB: Reducing the illegal sale of cigarettes to minors. *JAMA* 1989;261(1):80-83.

4. DiFranza JR, Norwood BD, Garner DW, Tye JB: Legislative efforts to protect children from tobacco. *JAMA* 1987;257(24):3387-3389.

5. Skretny MT, Cummings KM, Sciandra R, Marshall J: An intervention to reduce the sale of cigarettes to minors. *NY State J Med* 1990;90:54-55.

6. Forster JL, Hourigan M, McGovern P, Segal S: Availability of Cigarettes to Teenagers in Three Minnesota Communities. Under editorial review.

7. Bonner B: Groups Join to Fight Cigarette Machine Ban. *St. Paul Pioneer Press Dispatch*, October 23, 1989.

8. Sylvester K: The Tobacco Industry Will Walk a Mile to Stop an Anti-Smoking Law. *Governing* May 1989:34-40.

2026172423

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

Table 1. Cigarette Purchase Success by Type of Business and Method of Purchase

	Purchase Success*			
	Over the Counter	# of Attempts	Vending Machines	# of Attempts
Restaurants	50%	6	89%	54
Gas Stations	69%	21	100%	8
Convenience Stores	56%	115	____	0
Grocery Stores	62%	44	____	0
Drug Stores	44%	37	____	0
Liquor Stores	47%	44	63%	6
Private Clubs	100%	1	79%	22
Bars	40%	11	79%	45
Other	24%	22	64%	38
TOTAL	53%	301	79%	174

*Adjusted for age and sex of purchaser

2026172424

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

Table 2. Cigarette Purchase Success by Age and Gender of Purchaser, and Method of Purchase, April-May 1989

			Purchase Success					
Gender	Age	No. of Children	Over the Counter	# of Attempts	Vending Machine	# of Attempts	Mean*	
Boys	≤ 13 yrs	2	21%	28	74%	27	40%	
	14 yrs	3	21%	63	76%	34	41%	
	15 yrs	2	59%	56	75%	24	65%	
			p<0.001		NS			
	TOTAL		35%	147	75%	85	50%	p<0.004
Girls	≤ 13 yrs	3	65%	54	77%	30	69%	
	14 yrs	3	53%	32	81%	21	63%	
	15 yrs	1	84%	68	89%	38	86%	
			p<0.001		p<0.001			
	TOTAL	14	71%	154	83%	89	75%	p<0.003

*Adjusted for method of purchase

2026172425

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

Table 3. Purchase Success Before and After Increased Penalty for Sale to Minors

	Purchase Success					
	Over the Counter	# of Attempts		Vending Machine	# of Attempts	Mean**
April-May, 1989						
15-Year-Old Girl	84%	68		89%	37	86%
14-Year-Old Boys	22%	73		74%	43	41%
TOTAL	53%	141		82%	80	64%
July, 1989						
15-Year-Old Girl	66%	79	p<0.02*	89%	47 NS*	75%
14-Year-Old Boys	9%	78	p<0.03*	70%	46 NS*	32%
TOTAL	38%	157	p<0.02*	80%	93 NS*	53%

*Statistical comparisons are within age-sex category of purchaser, between 2 time points.

**Adjusted for method of purchase

2026172426

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

Table 4. Community Supply-Side Options for Tobacco Use Prevention

1. Support tobacco merchants' voluntary efforts

   - Provide information about state tobacco age of sale law and penalties
   - Organize training for tobacco salespeople
   - Provide signs for employees and for purchasers
   - Publicize merchants' efforts to comply with the law

2. Enforce and strengthen existing laws

   - Make enforcing the tobacco age of sale a priority for police
   - Make compliance with tobacco age of sale law a condition of licensure to sell tobacco, with loss of license a possibility
   - Raise municipal tobacco license fees to cover cost of surveillance
   - Require bond be posted by applicants for tobacco license, which would be forfeited if found to be selling tobacco to minors

3. New ordinances or administrative directives

   - Restrict or prohibit sale of cigarettes through vending machines
   - Establish a minimum age for tobacco salespeople
   - Require a sign with the tobacco age of sale law at point of purchase
   - Require plans for surveillance to be included in zoning approval for new tobacco outlets

4. Restrictions on tobacco advertising

   - Prohibit tobacco advertising on city-owned property
   - Work with local publications to refuse tobacco advertising
   - Solicit local support for counteradvertising

2026172427

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

Table 5. Local Restrictions on Cigarette Vending Machines by Population

Level of Restriction**

	Total Ban		Partial		Supervision		None	
Population*	N	%	N	%	N	%	N	%
2,000 - 4,999	4	3.8%	1	1.0%	5	4.9%	93	90.0%
5,000 - 9,999	3	7.3%	2	4.8%	0	—	36	86.0%
10,000 - 49,999	9	15.0%	6	10.0%	2	3.3%	43	72.0%
≥ 50,000	2	25.0%	3	37.5%	0	—	3	37.5%
TOTAL	18	8.5%	12	5.7%	7	3.3%	175	82.6%

*Based on 1980 census

**Definitions: Total Ban - No sale of cigarettes thought vending machines, or permitted only in private workplace

Partial - Some locations specified where machines not permitted, and/or locking devices required on some or all machines

Supervision - Machines must be within view of employees

2026172428

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

Table 6. Local Restrictions on Cigarette Vending Machines by Distance from Minneapolis-St. Paul Area*

Level of Restriction**

	Total Ban		Partial		Supervision		None	
Distance	N	%	N	%	N	%	N	%
Twin Cities Metro	12	13.0%	6	6.5%	3	3.3%	71	77.2%
≤ 60 miles	3	16.7%	2	11.1%	2	11.1%	11	61.1%
61-120 miles	3	7.5%	2	5.0%	1	2.5%	34	85.0%
> 120 miles	0	—	2	3.2%	1	1.6%	59	95.2%
TOTAL	18	8.5%	12	5.7%	7	3.3%	175	82.6%

*Seven County Metro Area

**Definitions: Total Ban - No sale of cigarettes thought vending machines, or permitted only in private workplace

Partial - Some locations specified where machines not permitted, and/or locking devices required on some or all machines

Supervision - Machines must be within view of employees

2026172429

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

Table 7. Status of Local Ordinances to Restrict Cigarette Vending Machine Sales in Minnesota Cities

A. TOTAL BAN

Was considered	60	(28.6%)
Adopted	18	
Defeated	3	
No action	39	

Reasons for No Action:		
Gathering more information	14	
Waiting for legislature to act	9	
Waiting for other cities to act	6	
Waiting for court action	1	
Discussed and rejected	14	

B. PARTIAL RESTRICTIONS

Was considered	82	(39.1%)
Adopted	20	
Defeated	3	
No action	59	

Reasons for No Action:	
Gathering more information	15
Waiting for legislature to act	16
Waiting for other cities to act	4
Waiting for court action	1
Discussed and rejected	20
Businesses voluntarily removed machines	2

2026172430

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

Table 8. Adoption of Other Ordinances by MN Communities, to Prevent Youth from Buying Tobacco

- Revoking or suspending license of vendor if caught selling tobacco to minor

Population Category	N	% of Total
2,000 - 4,999	16	15.7%
5,000 - 9,999	8	19.5%
10,000 - 49,999	11	18.6%
≥ 50,000	1	12.5%
TOTAL:	36	17.1%

- Requiring bond to be posted, which would be forfeited if caught selling tobacco to minor

N	% of Total
1	0.5%

- Requiring that cigarettes be sold behind the counter

N	% of Total
2	1.0%

- Fining minors who purchase tobacco

N	% of Total
5	2.4%

2026172431

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

Table 9. Efforts to Enforce the Minnesota Age of Tobacco Sale Law by Size of Community

	Population									
	2,000-4,999		5,000-9,999		10,000-49,999		≥ 50,000		TOTAL	
EFFORTS	N	%	N	%	N	%	N	%	N	%
Education/Notification of Law	19	18.6%	8	19.5%	10	16.7%	1	12.5%	38	18.1%
Signs posted	4	3.9%	1	2.4%	4	6.7%	1	12.5%	10	4.8%
Active enforcement	6	5.9%	1	2.4%	4	6.7%	0	—	11	5.2%
Requesting voluntary compliance	4	3.9%	1	2.4%	1	1.7%	0	—	6	2.9%
Other organizations involved	1	1.0%	0	—	0	—	0	—	1	0.5%
Nothing	70	68.6%	32	78.0%	44	73.3%	6	75.0%	152	72.4%
N	102		41		60		8		210	

2026172432

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000

Table 10. Purchase Success at Baseline and Follow-Up, by City[1]

	Percent (%) Success				
	Over the Counter	# of Attempts	Vending Machines	# of Attempts	TOTAL
HASTINGS					
April-May, 1989	73%	11	92%	13	83%
July, 1989	75%	20	86%	21	81%
May, 1990	88%	17	88%	17	88%
STILLWATER					
April-May, 1989	91%	23	91%	11	91%
July, 1989	59%	22	93%	14	72%
May, 1990	[Data Not Available]				
WHITE BEAR LAKE[2]					
April-May, 1989	82%	34	85%	13	83%
July, 1989	65%	37	92%	12	72%
May, 1990	26%	38	--	--	26%
NEW BRIGHTON[3]					
May, 1990	86%	21	86%	7	86%
BROOKLYN CENTER[4]					
May, 1990	45%	22	--	--	45%

[1]Using one 15-year-old girl as confederate
[2]Implemented Total Vending Machine Ban, Jan. 1, 1990
[3]Implemented Partial Restriction, April 1, 1990
[4]Implemented Total Vending Machine Ban, April 1, 1990

2026172433

Source: https://www.industrydocuments.ucsf.edu/docs/msmm0000